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IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

I.A. No. 17 of 2015
in

WRIT PETITION (CIVIL) No. 494 of 2012

In the matter of:

Justice K.S. Puttaswamy (Retd.) & Anr. ...Petitioners

//Versus//

Union of India & Ors. ... Respondent

AND IN THE MATTER OF:

State of Gujarat ... Applicant

**APPLICATION FOR CLARIFICATION/MODIFICATION OF
INTERIM ORDER DATED 11.08.2015**

[PAPER BOOK]

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ADVOCATE FOR THE APPLICANT:
MRS. HEMANTIKA WAHI

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IN THE SUPREME COURT OF INDIA

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in

WRIT PETITION (CIVIL) No. 494 of 2012

In the matter of:

Justice K.S. Puttaswamy (Retd.) & Anr. ...Petitioners

//Versus//

Union of India & Ors. ... Respondent

AND IN THE MATTER OF:

State of Gujarat,
Through Principal Secretary,
General Administration Department
Planning Division,
Block No. : 7, 4th Floor,
Sardar Bhavan,
Sachivalaya,
Gandhinagar
Gujarat

... Applicant

**APPLICATION FOR CLARIFICATION/MODIFICATION OF
INTERIM ORDER DATED 11.08.2015**

To:
The Hon'ble Chief Justice of India
and his companion Justices of the
Supreme Court of India.

The humble application of
the applicant above named;

MOST RESPECTFULLY SHEWETH:

1. That the abovementioned Writ Petition (Civil) 494 of 2012 is pending final disposal before this Hon'ble Court. The Applicant/State of Gujarat is one of the contesting respondents in the above petition.
2. The writ petitioner Justice K Puttaswamy (Retd) and Anr. have challenged the constitutionality and legality of the "Aadhaar card Scheme" floated by Government of India on various grounds.
3. This Hon'ble Court while referring the matter to larger bench was pleased to pass the following Interim Order dated 11.08.2015 (hereinafter shall be referred to as the "Interim Order").

"Having considered the matter, we are of the view that the balance of interest would be best served, till the matter is finally decided by a larger Bench if the Union of India or the UIDAI proceed in the following manner:-

1. The Union of India shall give wide publicity in the electronic and print media including radio and television networks that it is not mandatory for a citizen to obtain an Aadhaar card;
2. The production of an Aadhaar card will not be a condition for obtaining any benefits otherwise due to a citizen;

3. The Unique Identification Number or the Aadhaar card will not be used by the respondents for any purpose other than the PDS Scheme and in particular for the purpose of distribution of foodgrains, etc. and cooking fuel, such as kerosene. The Aadhaar card may also be used for the purpose of the LPG Distribution Scheme;
4. The information about an individual obtained by the Unique Identification Authority of India while issuing an Aadhaar card shall not be used for any other purpose, save as above, except as may be directed by a Court for the purpose of criminal investigation."

Copy of the order dated 11.08.2015 is annexed hereto and marked as Annexure- A/1 (at Page No. **16-31**).

4. It is humbly submitted that the operation of the interim order may impair the ease of access to the services and benefits being provided by Government of Gujarat as well as Government of India; to the residents having an Aadhaar Number. The Aadhaar Platform is intended to serve several vital purposes viz., financial inclusion, economic development and access to efficient governance with a view to enhance the standard of the living of the citizens. At the same time the operation of interim order has also affected the process of streamlining State Government's databases which is being taken up for de-duplication, so as to

deliver services efficiently and directly to the residents of the State in a time-bound manner.

5. Therefore the present Applicant is seeking a modification/clarification of Paragraph 3 & 4 of the interim order. The applicant State respectfully submits that Aadhaar Number is used for PDS Scheme and the LPG Distribution Scheme, however applicant State intends to use it for other social benefit schemes or services of the Government of India as well as Government of Gujarat and similar services based on resident's consent to enable those who are enrolling/enrolled on a voluntary basis to avail of the services and benefits linked with Aadhaar, or continue using the same. Hence, the applicant/State seeks clarification of Para 4 of the interim order, it is humbly requested that the information about an individual obtained by UIDAI while issuing an Aadhaar Number may not be restricted for the purpose of criminal investigation only; and information may be permitted to be provided for the benefit of various socio-economic welfare schemes of Central and State Government to the residents. This implies that when a resident who is enrolled for Aadhaar wants to avail of any Aadhaar-linked service, he/she would have the option of providing his/her biometrics, enabling the UIDAI to authenticate his/her identity. If authenticated, he/she would be facilitated to access the said service without delay, thereby saving time and the

need for providing other relevant documents with regard to identity and residence proof, at the time of every such transaction.

6. It is respectfully submitted that the Aadhaar Number is one of the most largely held forms of identity document with the widest coverage amongst the residents of Gujarat. This is indicative from the following table:-

Identity Document	Coverage
EPIC Card	4.10 Cr. ¹
Ration Card	1.18 Cr. ²
Driving License	0.97 Cr. ³
Aadhaar	4.37 Cr. ⁴

¹ Source: Election Commission of India website

² Source: NFSA Survey Govt. of Gujarat 2015

³ Source: Road Transport Year Book 2011-12

⁴ Source: UIDAI Web Portal

7. The State Government has been implementing several social welfare schemes including the Centrally sponsored schemes. In this context, the State Government has already put in implementation, the data digitization and seeding process with Aadhaar Number of beneficiaries to facilitate the maximum outreach of the scheme to their targeted beneficiaries. It is specifically to be mentioned that this seeding process is based on

information given by beneficiaries on purely a voluntary basis. A detail of important schemes of Government of India being implemented by the State Government is annexed hereto and marked as Annexure-A/2 (at Page No. 32).

8. It is most respectfully submitted that Para 3 of the directions given in the interim order prohibits the use of Aadhaar for any purpose apart from distribution of food-grains and kerosene in the PDS Scheme as well as LPG distribution, lakhs of residents of State may be denied the use of a basic form of identity for all other purposes, even if they choose to do so voluntarily. Given that the Aadhaar number is the most widely held identity document, this has the potential to cause substantial inconvenience to such residents, for many of whom the Aadhaar Number is the only identity proof that they possess.
9. The following are the schemes of the Government of India where use of Aadhaar number is sought to be used on voluntary basis in order to access basic services and benefits. Gujarat being the subset of India, the benefit of the schemes accrued to the residents of Gujarat is also affected largely since the relevant Departments are not allowing the way of availing benefits through Aadhaar Number.

- (1) Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS)
- (2) National Social Assistance Programme (Old Age Pensions, Widow Pensions, Disability Pensions)
- (3) Prime Minister's Jan Dhan Yojana (PMJDY)
- (4) Jeevan Pramaan (Life Certificate)
- (5) Online OPD registration and appointment (AIIMS and other hospitals)
- (6) Employees' Provident Fund Organisation (EPFO)

10. It is further submitted that the purpose of highlighting the aforementioned schemes or services is to demonstrate the widespread voluntary use of Aadhaar, the benefits that accrue to individuals, particularly to the poor and those without having any other form of identity, and the hardship that may be caused by the Interim order that prohibits such voluntary use.

11. It is also humbly submitted that this Hon'ble Court while allowing the use of Aadhaar for PDS and LPG schemes was guided by the Right to food, which is contained in Article 21 of the Constitution. However, it is humbly submitted that the schemes falling under other Rights viz. Right to work, Right to receive old age- pension or disability pension under the Article 21, may also be treated equally.

12. It is humbly submitted that it is the general endeavour that the various benefits, subsidies and services being offered by the State reach the intended and genuine beneficiaries. The uniqueness of Aadhaar is intended help in elimination of bogus and duplicates from taking advantage of database services.
13. It is humbly submitted the Aadhaar Scheme and its application to public services is a well considered decision of the Government to ensure that the benefits go to intended individuals, leakages and wastes in the deployment of public funds are reduced and residents can avail services with ease and convenience. As such, the application of Aadhaar to various social security benefit schemes is clearly in the larger public interest and the overall objective is to clean up the delivery system and to ensure that nobody takes away the legitimate rights of the beneficiaries.
14. One of the important initiatives by the State Government is to generate the U-WIN (Unorganized Workers Identification cards) cards for unorganized workers in the State. Section 10 of the Unorganized Workers Social Security Act, 2008 provides for issuing identity cards to Unorganized Workers and accordingly U-WIN card has to be provided to the registered Unorganized Workers. With an objective to prevent fake and bogus registration, duplication of taking fresh photographs etc. and make the entire process cost effective, the State Government intends to use Aadhaar database of the citizens. The implementation of U-WIN card project through which more than 1.25 Cr. of workers of the

State are to be benefited, however on account of Interim directions given by this Hon'ble Court, the process has slowed down.

15. This Hon'ble Court has always underlined the principle of consent and voluntariness respecting individual choice and autonomy while balancing the interests of the petitioners as well as residents of State who have voluntarily sought for the Aadhaar number for easy and convenient availability of social services and benefits, as discussed earlier. There appears to be no bar of law that merits a departure from this position. This is also evident from the Interim Orders passed from time to time. The order dated 23.9.2013 emphasized as follows:

" In the meanwhile, no person should suffer for not getting the Aadhaar card in spite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Aadhaar card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant."

Copy of the said Interim Order dated 23.09.2013 is annexed hereto and marked as Annexure-A/3 (at page No. 33-34.

16. Similarly, this Hon'ble Court while reiterating the earlier directions passed the order dated 16.03.2015 in the following terms:-

"Since Union of India is represented by learned Solicitor General and all the States are represented through their

respective counsel, we expect that both the Union of India and States and all their functionaries should adhere to the Order passed by this Court on 23rd September, 2013. "

Copy of the said Interim Order dated 16.03.2015 is annexed hereto and marked as Annexure-A/4 (at page No. **35-40.**

17. Further, this Hon'ble Court in a Special Leave Petition (Crl.) No.2524/2014 filed by the UIDAI against the order passed by the High Court of Bombay at Panaji reiterated that the use of Aadhaar shall be purely consent based and not compulsory. The operative portion of the said order dated 24.03.2014 is as follows:-

"In the meanwhile, the present petitioner is restrained from transferring any biometric information of any person who has been allotted the Aadhaar number to any other agency without his consent in writing.

More so, no person shall be deprived of any service for want of Aadhaar number in case he/she is otherwise eligible/entitled. All the authorities are directed to modify their forms/circulars/likes so as to not compulsorily require the Aadhaar number in order to meet the requirement of the Interim Order passed by this Court forthwith. "

Copy of the said Interim Order dated 24.03.2014 is annexed hereto and marked as Annexure-A5 (at page No. **41-42.**

18. In the Interim Order dated 11.08.2015, this Hon'ble Court has not stopped the process of enrolment of residents into Aadhaar on a voluntary basis. The same principle may be considered to be extended to the use of Aadhaar for implementation of social welfare schemes and services of State and Central Governments. This humble proposition merely involves giving an individual the option of using an Aadhaar-linked service in order to authenticate his/ her identity. The identity of the individual having been duly authenticated the service provider can proceed to provide the said service.
19. It is respectfully submitted that the Aadhaar platform enables the benefits to the society at large; especially the marginalized, vulnerable and underprivileged sections. In essence it involves millions of individuals consenting to a more convenient and secure method of accessing benefits from various schemes and services of the State and Central Governments. In this entirely consensual process of accessing benefits from various State and Central Government schemes, the question of individual's right to privacy being affected or violated in any way does not appear to arise.
20. It is humbly submitted that there is no likelihood of any injury, irreparable or otherwise, to be caused to the public, if this Hon'ble

Court allows the use of Aadhaar number on a voluntary basis by resident for getting benefit under any social benefit scheme or service. On the contrary, it is suggested that the balance of convenience lies in permitting the use of Aadhaar to crores of residents, particularly the poor, to exercise their rights and receive their benefits under various other social welfare schemes.

PRAYER

In light of the above submissions, it is, most respectfully prayed that this Hon'ble Court may be pleased to:-

- (a) clarify or modify its order dated 11.08.2015 to permit the use of the Aadhaar number not only for the PDS Scheme and LPG Distribution Scheme but also for any social welfare scheme or service of the Government of India, State Governments or like services based on individuals consent to enable those who are enrolled/enrolling on a voluntary basis to avail of the services and benefits of Aadhaar;
- (b) Permit the applicant State to use the information about an individual obtained by UIDAI with the consent of resident on voluntary basis while issuing an Aadhaar Number not only for the purpose of criminal investigation only; but also for facilitating the delivery of the various welfare Schemes of the Government of India and State Governments alike,

purely based on the consent of the resident; and

- (c) pass such other and further orders as this Hon'ble Court may deem fit and proper.

AND FOR THIS ACT OF KINDNESS, THE APPLICANT, AS IN DUTY BOUND SHALL EVER PRAY.

Filed by:

HEMANTIKA WAHI
ADVOCATE FOR THE APPLICANT

Filed on:- 28.09.2015

New Delhi

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A No. _____ OF 2015

IN

WRIT PETITION (CIVIL) NO. 494 OF 2012

IN THE MATTER OF:JUSTICE K.S PUTTASWAMY (RETD.)
& ANR..

...Petitioners

//VERSUS//

UNION OF INDIA & ORS.

...Respondents

IN THE MATTER OF :

State of Gujarat

....Applicant

AFFIDAVIT

I, A.D. Patel, Joint Secretary (Admin), & State Nodal Officer (UID), General Administration Department, Planning Division, Government of Gujarat, having my office at Block No.7, 4th Floor, Sachivalaya, Gandhinagar, Gujarat, presently at New Delhi, do hereby solemnly affirm and state as under:-

1. That I am working as the Joint Secretary (Admin) & State Nodal Officer (UID) of Government of Gujarat and therefore. I am conversant with the facts and circumstances of the case. As such I am competent to swear this affidavit.
2. That I have gone through the accompanying application for modification/clarification of interim order and have understood the same. I state that the facts stated in the present application are true based on the records maintained by the Applicant.

3. That the Annexures filed alongwith the present application are the true copies of their respective originals.


DEPONENT

VERIFICATION:

I, the deponent above named, do hereby verify that the contents of the above paras are true to my knowledge, and belief to be true and no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this the 28th day of September, 2015.


DEPONENT

ANNEXURE- 4/1

REPORTABLE 16

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.494 OF 2012

Justice K.S. Puttaswamy (Retd.) & Another ... Petitioners

Versus

Union of India & Others ... Respondents

WITH

TRANSFERRED CASE (CIVIL) NO.151 OF 2013

TRANSFERRED CASE (CIVIL) NO.152 OF 2013

WRIT PETITION (CIVIL) NO.829 OF 2013

WRIT PETITION (CIVIL) NO.833 OF 2013

WRIT PETITION (CIVIL) NO.932 OF 2013

TRANSFER PETITION (CIVIL) NO.312 OF 2014

TRANSFER PETITION (CIVIL) NO.313 OF 2014

WRIT PETITION (CIVIL) NO.37 OF 2015

WRIT PETITION (CIVIL) NO.220 OF 2015

TRANSFER PETITION (CIVIL) NO.921 OF 2015

CONTEMPT PETITION (CIVIL) NO.144 OF 2014 IN WP(C) 494/2012

CONTEMPT PETITION (CIVIL) NO.470 OF 2015 IN WP(C) 494/2012

ORDER

1. In this batch of matters, a scheme propounded by the Government of India popularly known as "Aadhaar Card Scheme" is

under attack on various counts. For the purpose of this order, it is

Signature Not Verified
Digitally signed by
Deepak Mohan
Date: 2015.04.14
17:28:15
Reason:

It is not necessary for us to go into the details of the nature of the scheme

and the various counts on which the scheme is attacked. Suffice it to say that under the said scheme the Government of India is collecting and compiling both the demographic and biometric data of the residents of this country to be used for various purposes, the details of which are not relevant at present.

2. One of the grounds of attack on the scheme is that the very collection of such biometric data is violative of the "right to privacy".

Some of the petitioners assert that the right to privacy is implied under Article 21 of the Constitution of India while other petitioners assert that such a right emanates not only from Article 21 but also from various other articles embodying the fundamental rights guaranteed under Part-III of the Constitution of India.

3. When the matter was taken up for hearing, Shri Mukul Rohatgi, learned Attorney General made a submission that in view of the judgments of this Court in *M.P. Sharma & Others v. Satish Chandra & Others*, AIR 1954 SC 300 and *Kharak Singh v. State of U.P. & Others*, AIR 1963 SC 1295, (decided by Eight and Six Judges respectively) the legal position regarding the existence of the fundamental right to privacy is doubtful. Further, the learned Attorney General also submitted that in a catena of decisions of this Court rendered subsequently, this Court referred to "right to privacy", contrary to the judgments in the abovementioned cases which resulted

in a jurisprudentially impermissible divergence of judicial opinions.

"A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations **by recognition of a fundamental right to privacy**, analogous to the American Fourth Amendment, **we have no justification to import it, into a totally different fundamental right**, by **some process of strained construction**. [See: *M.P. Singh & Others v. Satish Chandra & Others*, AIR 1954 SC 300, page 306 para 18]

"... Nor do we consider that Art. 21 has any relevance in the context as was sought to be suggested by learned counsel for the petitioner. As already pointed out, **the right of privacy is not a guaranteed right under our Constitution** and therefore the attempt to ascertain the movement of an individual which is merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III." [See: *Kharak Singh v. State of U.P. & Others*, AIR 1963 SC 1295, page 1303 para 20]

[Emphasis supplied]

4. Learned Attorney General submitted that such impermissible divergence of opinion commenced with the judgment of this Court in ***Gobind v. State of M.P. & Another***, (1975) 2 SCC 148, which formed the basis for the subsequent decision of this Court wherein the "right to privacy" is asserted or at least referred to. The most important of such cases are ***R. Rajagopal & Another v. State of Tamil Nadu & Others***, (1994) 6 SCC 632 (popularly known as *Auto Shanker's case*) and ***People's Union for Civil Liberties (PUCL) v. Union of India & Another***, (1997) 1 SCC 301.

5. All the judgments referred to above were rendered by smaller Benches of two or three Judges.

6. Shri K.K. Venugopal, learned senior counsel appearing for one of

the respondents submitted that the decision of this Court in **Gobind** (*supra*) is not consistent with the decisions of this Court in **M.P. Sharma** and **Kharak Singh**. He submitted that such divergence is also noticed by the academicians, Shri F.S. Nariman, Senior Advocate of this Court and Shri A.M. Bhattacharjee¹, Former Chief Justice, High Court at Calcutta and High Court at Bombay.

7. Therefore, it is submitted by the learned Attorney General and Shri Venugopal that to settle the legal position, this batch of matters is required to be heard by a larger Bench of this Court as these matters throw up for debate important questions – (i) whether there is any “right to privacy” guaranteed under our Constitution. (ii) If such a right exists, what is the source and what are the contours of such a right as there is no express provision in the Constitution adumbrating the right to privacy. It is therefore submitted that these batch of matters are required to be heard and decided by a larger bench of at least five Judges in view of the mandate contained under Article 145(3)² of the Constitution of India.

¹

A.M. Bhattacharjee, *Equality, Liberty & Property under the Constitution of India*, (Eastern Law House, New Delhi, 1997)

² Article 145(3). The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under Article 143 shall be five:
Provided that, where the Court hearing an appeal under any of the provisions of this chapter other than Article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is

8. On behalf of the petitioners Shri Gopal Subramaniam and Shri Shyam Divan, learned senior counsel very vehemently opposed the suggestion that this batch of matters is required to be heard by a larger bench. According to them:

(i) The conclusions recorded by this Court in **R. Rajagopal** and **PUCL** are legally tenable for the reason that the observations made in **M.P. Sharma** regarding the absence of right to privacy under our Constitution are not part of ratio decidendi of that case and, therefore, do not bind the subsequent smaller Benches.

(ii) Coming to the case of **Kharak Singh**, majority in **Kharak Singh** did hold that the right of a person not to be disturbed at his residence by the State and its officers is recognized to be a part of a fundamental right guaranteed under Article 21 which is nothing but an aspect of privacy. The observation in para 20 of the majority judgment at best can be construed only to mean that there is no fundamental right of privacy against the State's authority to keep surveillance on the activities of a person. Even such a conclusion cannot be good law any more in view of the express declaration made by a seven-Judge bench decision of this Court in **Maneka Gandhi v. Union of India &**

Another, (1978) 1 SCC 248³.

necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion

³ Para 5. ... It was in **Kharak Singh v. State of U.P.**, AIR 1963 SC 1295 that the question as to the proper scope and meaning of the expression 'personal liberty' came up pointedly for consideration for the first time before this Court. The

(iii) They further argued that both *M.P. Sharma (supra)* and *Kharak Singh (supra)* came to be decided on an interpretation of the Constitution based on the principles expounded in *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27. Such principles propounded by *A.K. Gopalan* themselves came to be declared wrong by a larger Bench of this Court in *Rustom Cavasjee Cooper v. Union of India*, (1970) 1 SCC 248. Therefore, there is no need for the instant batch of matters to be heard by a larger Bench.

9. It is true that *Gobind (supra)* did not make a clear declaration that there is a right to privacy flowing from any of the fundamental rights guaranteed under Part-III of the Constitution of India, but observed that "Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterize as a fundamental right, we do not think that the right is absolute". This Court proceeded to decide the case on such basis.

10. However, the subsequent decisions in *R. Rajagopal (supra)* and

majority of the Judges took the view "that 'personal liberty' is used in the article as a compendious term to include within itself all the varieties of rights which go to make up the 'personal liberties' of man other than those- dealt with in the several clauses of Article 19(1). In other words, while Article 19(1) deals with particular species or attributes, of that freedom, 'personal liberty' in Article 21 takes in and comprises the residue". The minority judges, however, disagreed with this view taken by the majority and explained their position in the following words: "No doubt the expression 'personal liberty' is a comprehensive one and the right to move freely is an attribute of personal liberty. It is said that the freedom to move freely is carved out of personal liberty and, therefore, the expression 'personal liberty' in Article 21 excludes that attribute. In our view, this is not a correct approach. Both are independent fundamental rights, though there is overlapping. There is no question of one being carved out of another. The fundamental right of life and personal liberty has many attributes and some of them are found in Article 19. If a person's fundamental right under Article 21 is infringed, the State can rely upon a law to sustain the action, but that cannot be a complete answer unless the said law satisfies the test laid down in Article 19(2) so far as the attributes covered by Article 19(1) are concerned". There can be no doubt that in view of the decision of this Court in *R. C. Cooper v. Union of India*, (1970) 2 SCC 298 the minority view must be regarded as correct and the majority view must be held to have been overruled.

PUCL (*supra*), the Benches were more categorical in asserting the existence of "right to privacy". While *R. Rajagopal's case*⁴ held that the "right to privacy" is implicit under Article 21 of the Constitution, *PUCL's case* held that the "right to privacy" insofar as it pertains to speech is part of fundamental rights under Articles 19(1)(a) and 21 of the Constitution⁵.

11. Elaborate submissions are made at the bar by the learned counsel for the petitioners to demonstrate that world over in all the countries where Anglo-Saxon jurisprudence is followed, 'privacy' is recognised as an important aspect of the liberty of human beings. It is further submitted that it is too late in the day for the Union of India to argue that the Constitution of India does not recognise privacy as an aspect of the liberty under Article 21 of the Constitution of India. At least to the extent that the right of a person to be secure in his house and not to be disturbed unreasonably by the State or its officers is

⁴ Para 9. "Right to privacy is not enumerated as a fundamental right in our Constitution but has been inferred from Article 21."

⁵ Para 18. "The right to privacy — by itself — has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy". Conversations on the telephone are often of an intimate and confidential character. Telephone conversation is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man's private life. Right to privacy would certainly include telephone conversation in the privacy of one's home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law.

19. Right to freedom of speech and expression is guaranteed under Article 19(1)(a) of the Constitution. This freedom means the right to express one's convictions and opinions freely by word of mouth, writing, printing, picture, or in any other manner. When a person is talking on telephone, he is exercising his right to freedom of speech and expression. Telephone-tapping unless it comes within the grounds of restrictions under Article 19(2) would infract Article 19(1)(a) of the Constitution."

expressly recognized and protected in *Kharak Singh* (*supra*) though the majority did not describe that aspect of the liberty as a right of privacy, it is nothing but the right of privacy.

12. We are of the opinion that the cases on hand raise far reaching questions of importance involving interpretation of the Constitution. What is at stake is the amplitude of the fundamental rights including that precious and inalienable right under Article 21. If the observations made in *M.P. Sharma* (*supra*) and *Kharak Singh* (*supra*) are to be read literally and accepted as the law of this country, the fundamental rights guaranteed under the Constitution of India and more particularly right to liberty under Article 21 would be denuded of vigour and vitality. At the same time, we are also of the opinion that the institutional integrity and judicial discipline require that pronouncement made by larger Benches of this Court cannot be ignored by the smaller Benches without appropriately explaining the reasons for not following the pronouncements made by such larger Benches. With due respect to all the learned Judges who rendered the subsequent judgments - where right to privacy is asserted or referred to their Lordships concern for the liberty of human beings, we are of the humble opinion that there appears to be certain amount of apparent unresolved contradiction in the law declared by this Court.

13. Therefore, in our opinion to give a quietus to the kind of

controversy raised in this batch of cases once for all, it is better that the ratio decidendi of *M.P. Sharma (supra)* and *Kharak Singh (supra)* is scrutinized and the jurisprudential correctness of the subsequent decisions of this Court where the right to privacy is either asserted or referred be examined and authoritatively decided by a Bench of appropriate strength.

14. We, therefore, direct the Registry to place these matters before the Hon'ble the Chief Justice of India for appropriate orders.

.....J.
(J. Chelameswar)

.....J.
(S.A. Bobde)

.....J.
(C. Nagappan)

New Delhi
August 11, 2015

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.494 OF 2012

Justice K.S. Puttaswamy (Retd.) & Another ...Petitioners

Versus

Union of India & Others

... Respondents

WITHTRANSFERRED CASE (CIVIL) NO.151 OF 2013TRANSFERRED CASE (CIVIL) NO.152 OF 2013WRIT PETITION (CIVIL) NO.829 OF 2013WRIT PETITION (CIVIL) NO.833 OF 2013WRIT PETITION (CIVIL) NO.932 OF 2013TRANSFER PETITION (CIVIL) NO.312 OF 2014TRANSFER PETITION (CIVIL) NO.313 OF 2014WRIT PETITION (CIVIL) NO.37 OF 2015WRIT PETITION (CIVIL) NO.220 OF 2015TRANSFER PETITION (CIVIL) NO.921 OF 2015CONTEMPT PETITION (CIVIL) NO.144 OF 2014 IN WP(C) 494/2012CONTEMPT PETITION (CIVIL) NO.470 OF 2015 IN WP(C) 494/2012

ORDER

Having regard to importance of the matter, it is desirable that the matter be heard at the earliest.

.....J.
(J. Chelameswar)

.....J.
(S.A. Bobde)

.....J.
(C. Nagappan)

New Delhi
August 11, 2015

REPORTABLE
IN THE SUPREME COURT OF INDIA
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WRIT PETITION (CIVIL) NO.220 OF 2015

TRANSFER PETITION (CIVIL) NO.921 OF 2015

CONTEMPT PETITION (CIVIL) NO.144 OF 2014 IN WP(C) 494/2012

CONTEMPT PETITION (CIVIL) NO.470 OF 2015 IN WP(C) 494/2012

I N T E R I M O R D E R

After the matter was referred for decision by a larger Bench, the learned counsel for the petitioners prayed for further interim orders. The last interim order in force is the order of this Court dated 23.9.2013 which reads as follows:-

“....

All the matters require to be heard finally. List all matters for final hearing after the Constitution Bench is over.

In the meanwhile, no person should suffer for not getting the Aadhaar card inspite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Aadhaar card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant."

It was submitted by Shri Shyam Divan, learned counsel for the petitioners that the petitioners having pointed out a serious breach of privacy in their submissions, preceding the reference, this Court may grant an injunction restraining the authorities from proceeding further in the matter of obtaining biometrics etc. for an Aadhaar card. Shri Shyam Divan submitted that the biometric information of an individual can be circulated to other authorities or corporate bodies which, in turn can be used by them for commercial exploitation and, therefore, must be stopped.

The learned Attorney General pointed out, on the other hand, that this Court has at no point of time, even while making the interim order dated 23.9.2013 granted an injunction restraining the Unique Identification Authority of India from going ahead and obtaining biometric or other information from a citizen for the purpose of a Unique Identification Number, better known as "Aadhaar card". It was further submitted that the respondents have gone ahead with the project and have issued Aadhaar cards to

about 90% of the population. Also that a large amount of money has been spent by the Union Government on this project for issuing Aadhaar cards and that in the circumstances, none of the well-known considerations for grant of injunction are in favour of the petitioners.

The learned Attorney General stated that the respondents do not share any personal information of an Aadhaar card holder through biometrics or otherwise with any other person or authority. This statement allays the apprehension for now, that there is a widespread breach of privacy of those to whom an Aadhaar card has been issued. It was further contended on behalf of the petitioners that there still is breach of privacy. This is a matter which need not be gone into further at this stage.

The learned Attorney General has further submitted that the Aadhaar card is of great benefit since it ensures an effective implementation of several social benefit schemes of the Government like MGNREGA, the distribution of food, ration and kerosene through PDS system and grant of subsidies in the distribution of LPG. It was, therefore, submitted that restraining the respondents from issuing further Aadhaar cards or fully utilising the existing Aadhaar cards for the social schemes of the Government should be allowed.

The learned Attorney General further stated that the

respondent Union of India would ensure that Aadhaar cards would only be issued on a consensual basis after informing the public at large about the fact that the preparation of Aadhaar card involving the parting of biometric information of the individual, which shall however not be used for any purpose other than a social benefit schemes.

Having considered the matter, we are of the view that the balance of interest would be best served, till the matter is finally decided by a larger Bench if the Union of India or the UIDA proceed in the following manner:-

1. The Union of India shall give wide publicity in the electronic and print media including radio and television networks that it is not mandatory for a citizen to obtain an Aadhaar card;
2. The production of an Aadhaar card will not be condition for obtaining any benefits otherwise due to a citizen;
3. The Unique Identification Number or the Aadhaar card will not be used by the respondents for any purpose other than the PDS Scheme and in particular for the purpose of distribution of foodgrains, etc. and cooking fuel, such as kerosene. The Aadhaar card may also be used for the purpose of the LPG Distribution Scheme;
4. The information about an individual obtained by the Unique

Identification Authority of India while issuing an Aadhaar card shall not be used for any other purpose, save as above, except as may be directed by a Court for the purpose of criminal investigation.

Ordered accordingly.

.....J.
(J. Chelameswar)

.....J.
(S.A. Bobde)

.....J.
(C. Nagappan)

New Delhi
August 11, 2015

ANNEXURE- A/2

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ANNEXURE - B						
AADHAAR SEEDING FOR SELECTED SCHEMES						
Sr. No.	Name of Scheme	Total Number of Beneficiaries	No. of Digitized Record	% of Record Digitized	Number of Aadhaar seeded in Database	% of Aadhaar Seeding in database
1	Old Age Pension	511217	299476	58.58	130992	25.62
2	Disabled Pension	5615	4623	82.33	3056	54.43
3	Widow Pension	7201	7201	100.00	1293	17.96
4	Post Matric Scholarships - Minorities	40422	40422	100.00	23612	58.41
5	Post Matric Scholarships - SC	122850	73127	59.53	64486	52.49
6	Pre Matric Scholarships - SC	42651	23012	53.95	23550	55.22
7	Post Matric Scholarships - ST	28749	9175	31.91	17149	59.65
8	Merit Cum Means Scholarship for minorities	4958	4958	100.00	3161	63.76
9	Post Matric Scholarships - OBC	96810	36029	37.22	11402	11.78
10	National Scheme for Incentive for girl Child for Secondary Education	39802	39802	100.00	11230	28.21
11	Pre Matric Scholarship for Children of Those Engaged Unclean Occupations	147563	91242	61.83	86832	58.84
12	Upgradation of Merit of SC Students	143	119	83.22	108	75.52
13	Janani Suraksha Yojana(JSY)	280168	36091	12.88	0	0.00
14	Indira Gandhi Matritva Sahyog Yojana	24658	22169	89.91	10333	41.91
15	National Means cum Merit Scholarship	930	930	100.00	313	33.66
16	Scholarship to Universities/College Students	1501	1501	100.00	582	38.77
17	MGNREGA	1494405	1494405	100.00	494309	33.08
18	LPG	6302795	6302795	100.00	3410405	54.11
19	PDS	11843033	11843033	100.00	2091393	17.66
20	Electors	41093862	41093862	100.00	10344167	25.17

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 494 OF 2012

JUSTICE R.B. PUTTASWAMY (RETD) & ANR

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for stay)

WITH T.P. (C) NO. 47-48 of 2013

(With appln(s) for stay and office report)

(Appln. for deletion of the name of petitioner no. 1)

T.P. (C) NO. 476 of 2013

(With appln(s) for stay and office report)

W.P. (C) No. 829 of 2013

(With appln(s) for interim relief and office report)

Date: 23/09/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN

HON'BLE MR. JUSTICE B.A. BOBDE

For Petitioner(s)

Mr. Anil B. Divan, Sr. Adv.

Mr. Ankit Goel, Adv.

Mr. Ranvir Singh, Adv.

Mr. Sanjay Yadav, Adv.

Mr. Anish Kumar Gupta, Adv.

Ms. Deepshikha Bharati, Adv.

Mr. S.S. Shamsbery, Adv.

Mr. Rajeev Kr. Singh, Adv.

Mr. Nachikata Joshi, Adv.

Mr. P.R. Kovilan Poongkuntaran, Adv.

Mrs. Geetha Kovilan, Adv.

Mr. Shyam Divan, Sr. Adv.

Mr. Pratap Venugopal, Adv.

Ms. Meenakshi Chauhan, Adv.

Mr. Varun Singh, Adv.

Mr. Gaurav Nair, Adv.

for

M/s. K.J. John & Co.

For Respondent(s)

Mr. Mohan Parasaran, SG

Mr. L. Nagashwar Rao, ASG

Mr. Farrukh Rasheed, Adv.

Mr. Alok Mishra, Adv.

Mr. D.S. Mahra, Adv.

UPON hearing counsel the Court made the following
O R D E R

Issue notice in W.P. (C) No. 829/2013.

Application for deletion of the name of
petitioner no. 1 in T.P. (C) Nos. 47 of 2013 is
allowed.

T.P. (C) nos. 47-48 of 2013 and T.P. (C) No.
476 of 2013 are allowed in terms of the signed
order.

All the matters require to be heard
finally. List all matters for final hearing after
the Constitution Bench is over.

In the meanwhile, no person should suffer
for not getting the Adhaar card inspite of the fact
that some authority had issued a circular making it
mandatory and when any person applies to get the
Adhaar Card voluntarily, it may be checked whether
that person is entitled for it under the law and it
should not be given to any illegal immigrant.

(DEEPAK MANSUKHANI)

Court Master

(Signed order is placed on the file)

(M.S. NEGI)

Court Master

ITEM NO.301

COURT NO.6

SECTION PIL

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 494/2012

JUSTICE K.S.PUTTASWAMY (RETD) & ANR

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for stay, impleadment, clarification/modification of Court's order, intervention, directions, permission to file additional documents, permission to file additional additional affidavit and office report)
(For Final Disposal)

WITH

T.C.(C) No. 151/2013

(With appln.(s) for impleadment as party respondent and appln.(s) for modification of court's order)

T.C.(C) No. 152/2013

W.P.(C) No. 829/2013

(With appln.(s) for impleadment and impleadment/directions and interim relief and office report)

W.P.(C) No. 833/2013

(With appln.(s) for directions and appln.(s) for impleadment and appln.(s) for impleadment and appln.(s) for permission to file additional documents and Office Report)

W.P.(C) No. 932/2013

(With appln.(s) for directions and appln.(s) for interim directions and Office Report)

T.P.(C) No. 312/2014

(With Office Report)

T.P.(C) No. 313/2014

(With Office Report)

W.P.(C) No. 37/2015

(With appln.(s) for amendment of memo of parties and interim stay

Signature Not Verified

Digitally signed by

Deepak Maheshwari

Date: 2015.03.16

11:40:21 IST

Reason:

and permission to file additional documents and office report)
Date : 16/03/2015 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J. CHELAMESWAR
 HON'BLE MR. JUSTICE S.A. BOBDE
 HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s)

Mr. Gopal Subramaniam, Sr. Adv.
 Ms. Aishwarya Bhati, Adv.
 Mr. Talha Abdul Rehman, Adv.
 Ms. Neha Meena, Adv.
 Ms. Anusha Ramesh, Adv.
 Ms. Sadhana Saxena, Adv.

Mr. Shyam Divan, Sr. Adv.
 Mr. Pratap Venugopal, Adv.
 Ms. Surekha Raman, Adv.
 Ms. Supriya Jain, Adv.
 Mr. Gaurav Nair, Adv.
 Ms. Niharika, Adv.

For M/s. K.J. John & Co.

Ms. Meenakshi Arora, Sr. Adv.
 Mr. Rahul Narayan, Adv.
 Mr. Mohit Singh, Adv.

Mr. Abhishek Atrey, Adv.

Ms. V. Mohana, Adv.
 Mr. B. Raghunath, Adv.
 Mr. Vijay Kumar, Adv.

Ms. Geeta Kovilam, Adv.
 Mr. P.V. Kovilam, Adv.

Mr. Ankit Goel, Adv.
 Mr. Sanjay Yadav, Adv.
 for Mr. Anish Kumar Gupta, Adv.

Mr. Amit Meharia, Adv.
 Mr. Tannishtha Singh, Adv.
 For M/s. Meharia & Company

For Respondent(s)
 UOI

Mr. Ranjit Kumar, SG
 Mr. Maninder Singh, ASG
 Mr. Ajay Sharma, Adv.
 Ms. Binu Tamta, Adv.
 Ms. Meenakshi Grover, Adv.
 Mr. Zoheb Hossain, Adv.
 Mr. Abhinav Mukerji, Adv.

Mr. B.K. Prasad, Adv.
Mr. D.S. Mahra, Adv.

Mr. Prasanna S., Adv.

Mr. Gopal Singh, Adv.
Mr. Rituraj Biswas, Adv.
Ms. Rashmi Srivastava, Adv.
Ms. Shubra Rai, Adv.

Mr. Jayant Bhushan, Sr. Adv.
Mr. Kuldeep S. Parihar, Adv.
Mr. H.S. Parihar, Adv.

State of Uttarakhand Mr. Pankaj Bhatia, Adv.
Mr. Dushyant Kumar, Adv.
Mr. Vivek Choudhary, Adv.
Mr. Jatinder Kumar Bhatia, Adv.

Mr. Sumit Atrey, Adv.
Ms. Priyadarshi Banerjee, Adv.
Mr. Ankur Saigal, Adv.
Mr. E.C. Agrawala, Adv.

State of Telangana Mr. S. Udaya Kumar Sagar, Adv.
Mr. Krishna Kumar Singh, Adv.

State of Gujarat Ms. Hemantika Wahi, Adv.
Ms. Jesal Wahi, Adv.
Ms. Puja Singh, Adv.

State of Jharkhand Mr. Tapesk Kumar Singh, Adv.
Mr. Kumar Anurag Singh, Adv.
Mr. Mohd. Waqas, Adv.

Govt. of Puducherry Mr. V.G. Pragasam, Adv.
Mr. S.J. Aristotle, Adv.
Mr. Prabu Ramasubramanian, Adv.

ELI Mr. Mohit Ram, Adv.
Ms. Monisha Handa, Adv.
Mr. Neeraj Kumar, Adv.

State of Assam Mr. Riku Sarma, Adv.
Mr. Navnit Kumar, Adv.
M/s. Corporate Law Group

State of WB Mr. Soumitra G. Chaudhuri, Adv.
Mr. Anip Sachthey, Adv.

State of Nagaland	Ms. K. Enatoli Sema, Adv. Mr. Amit Kumar Singh, Adv. Mr. Balaji Srinivasan, Adv.
State of HP	Mr. J.S. Attri, Sr. Adv. Mr. Varinder Kumar Sharma, Adv. Mr. Sumeet Prakash, Adv.
State of Maharashtra	Ms. Asha Gopalan Nair, Adv. Mr. A.P. Mayee, Adv. Mr. A. Selvin Raja, Adv.
A&N Administration	Mr. K.V. Jagdishvaran, Adv. Ms. G. Indira, Adv.
State of Sikkim	Ms. Aruna Mathur, Adv. Mr. Yusuf Khan, Adv. Mr. K. Vijay Kumar, Adv. M/s Arputham Aruna & Co., Adv.
State of Goa	Mr. Ninad Laud, Adv. Mr. Karan Mathur, Adv. Mr. Jayant Mohan, Adv.
State of Manipur	Mr. Sapam Biswajit Meitei, Adv. Mr. Z.H. Issac Haiding, Adv. Mr. Ashok Kumar Singh, Adv.
State of Rajasthan	Mr. Shiv Mangal Sharma, Adv. Mr. Shrey Kapoor, Adv. Ms. Ruchi Kohli, Adv.
State of HP	Mr. Suryanarayana Singh, AAG Ms. Pragati Neekhara, Adv.
State of Punjab	Mr. Sanchar Anand, Adv. Mr. Apoorv Singhal, Adv.
State of Kerala	Mr. Jogy Scaria, Adv. Mr. R.S. Bed, Adv.
State of Mizoram	Mr. K.N. Madhusoodhanam, Adv. Mr. T.G.N. Nair, Adv.
NCT of Delhi	Mr. J.M. Kalia, Adv.
State of Haryana	Mr. B.K. Satija, AAG
IA 5of 2014 in CWP 833/13	Mr. Sumit Attri, Adv. Mr. E.C. Agrawala, Adv.

-5-

	Mr. Gopal Sankaranarayanan, Adv.
	Ms. Savita Singh, Ad.
	Mr. Prashant, Adv.
State of TN	Mr. B. Balaji, Adv.
	Mr. R. Rakesh Sharma, Adv.
	Ms. R. Shase, Adv.
State of Bihar	Mr. Abhinav Mukerji, Adv.
UT Chandigarh	Ms. Vimla Sinha, Adv.
	Mr. Gopal Singh, Adv.
	Mr. Amit Sharma, Adv.
	Mr. Dipesh Sinha, Adv.
Beghar Foundation	Mr. Saikrishna Rajagopal, Adv.
	Mr. Juhen George, Adv.
	Mr. Arjun Ranganathan, Adv.
	Mr. Nikhil Nayyar, Adv.
	Mr. Kamal Mohan Gupta, Adv.
	Ms. C. K. Sucharita, Adv.
	Mr. Mishra Saurabh, Adv.
	Mr. Garvesh Kabra, Adv.
	Mr. T. G. Narayanan Nair, Adv.
	Ms. Anitha Shenoy, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The matters require considerable time for hearing. Therefore, we direct the matters to be listed for hearing in the second week of July, 2015 after obtaining appropriate orders from Hon'ble the Chief Justice of India.

In the meanwhile, it is brought to our notice that in certain quarters, Aadhar identification is being insisted upon by the various authorities, we do not propose to go into the specific instances.

Since Union of India is represented by learned Solicitor General and all the States are represented through their respective counsel, we expect that both the Union of India and States and all their functionaries should adhere to the Order passed by this Court on 23rd September, 2013.

Pleadings be completed before the end of April, 2015.

All the parties are at liberty to file any further affidavit or documents, if they so wish.

(DEEPAK MANSUKHANI)
COURT MASTER

(TAPAN KR. CHAKRABORTY)
COURT MASTER

ITEM NO.57

COURT NO.4

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl) No(s).2524/2014
(From the judgement and order dated 26/02/2014 in CRLWP
No.10/2014, of The HIGH COURT OF BOMBAY AT PANAJI)

UNIQUE IDENTIFICATION AUTH.OF INDIA
&ANR

Petitioner(s)

VERSUS

CENTRAL BUREAU OF INVESTIGATION

Respondent(s)

(With appln. for exemption from filing c/c of the impugned
Judgment and office report)

Date: 24/03/2014 This Petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN

HON'BLE MR. JUSTICE J. CHELAMESWAR

For Petitioner(s)

Mr.Mohan Parasaran, SG
Mr.Rakesh Khanna, ASG
Mr. Zohen Hossain, Adv.
Mr. Alok Mishra, Adv.
Mr. D.S. Mahra,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

Issue notice.

In addition to normal mode of service, dasti service, is
permitted.

Operation of the impugned order shall remain stayed.

In the meanwhile, the present petitioner is restrained from
transferring any biometric information of any person who has
been allotted the Aadhaar number to any other agency
without his consent in writing.

More so, no person shall be deprived of any service for want of Aadhaar number in case he/she is otherwise eligible/entitled. All the authorities are directed to modify their forms/circulars/likes so as to not compulsorily require the Aadhaar number in order to meet the requirement of the interim order passed by this Court forthwith.

Tag and list the matter with main matter i.e. WP(C) No.494/2012.

[Usha Bhardwaj]
A.R.-cum-P.S.

[M.S. Negi]
Assistant Registrar